

## **BILL ANALYSIS**

C.S.H.B. 351  
By: Veasey  
Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, Texas law is unclear on the right of a person to expunction of arrest records and files after a dismissal of charges or the granting of relief on the basis of actual innocence. Certain felonies have no statute of limitations, and it would appear to many that criminal records reflecting those offenses can never be expunged. A person who has been mistakenly charged with a felony, especially one that carries a particularly negative stigma, should be able to have the person's record expunged. C.S.H.B. 351 seeks to remedy this situation by clarifying current statutes relating to the entitlement to expunction of arrest records and files and to expand such entitlement to persons who meet certain requirements.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 351 amends the Code of Criminal Procedure to include in the entitlement to have all records and files relating to an arrest expunged a person who has been placed under a custodial or noncustodial arrest for commission of either a felony or misdemeanor, is tried for the offense for which the person was arrested, and is convicted and subsequently granted relief on the basis of actual innocence with respect to that offense, if the applicable pardon or court order clearly indicates on its face that the pardon or order was granted or rendered on the basis of the person's actual innocence.

C.S.H.B. 351 adds, for a person who is entitled to expunction because, among other conditions, an indictment or information charging the person with the commission of a felony or misdemeanor arising out of the transaction for which the person was arrested has not been presented, the condition that the attorney representing the state certify that the applicable arrest records and files are not needed for use in any criminal investigation or prosecution, including an investigation or prosecution of another person. The bill makes a technical correction to clarify the applicability of expunction entitlement with respect to an indictment or information charging a person with the commission of a misdemeanor arising out of the transaction for which the person was arrested. The bill revises the conditions that must be met for such persons to be entitled to expunction to include the specification that the entitlement applies regardless of whether any statute of limitations exists for the offense and whether any limitations period has expired and makes conforming changes.

C.S.H.B. 351 includes as a condition for an arrested person, who has been released without having a pending charge or final conviction or court-ordered community supervision for an offense arising out of the transaction for which the person was arrested except for a Class C misdemeanor to be entitled to expunction, that prosecution for the offense for which the person was arrested is no longer possible because the statute of limitations has run. The bill removes as a condition for such a person to be entitled to expunction that the person has not been convicted

of a felony in the five years preceding the date of the arrest.

C.S.H.B. 351 prohibits a person from expunging records and files relating to an arrest that occurs under a warrant issued for violation of a condition of community supervision. The bill removes a provision specifying that a person's conviction of a felony in the five years preceding the date of an arrest does not affect the person's entitlement to expunction for purposes of an ex parte petition filed on behalf of the person by the public safety director of the Department of Public Safety.

C.S.H.B. 351 provides, in one of conditions that must be met for a district court to be authorized to expunge all records and files relating to the arrest of a person who has been arrested for commission of a felony or misdemeanor, as an alternative to acquittal by the court of criminal appeals, the acquittal of the person by a court of appeals if the period for granting a petition for discretionary review has expired. The bill makes a conforming change. The bill expands the circumstances under which a district court is authorized to order such an expunction to include a recommendation for expunction by an office of the attorney representing the state authorized by law to prosecute the offense for which the person was arrested to the appropriate district court before the person is tried for the offense, regardless of whether an indictment or information has been presented against the person in relation to the offense. The bill makes conforming changes in a provision relating to the procedure for expunction.

C.S.H.B. 351 requires a trial court presiding over a case in which a defendant is convicted and subsequently pardoned or otherwise granted relief on the basis of actual innocence of the offense of which the defendant was convicted, if the trial court is a district court, or a district court in the county in which the trial court is located, to enter an order of expunction for the entitled person not later than the 30th day after the date the court receives notice of the pardon or other grant of relief. The bill requires the person to provide to the district court all of the information required in an ex parte petition for expunction. The bill requires the attorney for the state to prepare an expunction order for the court's signature.

C.S.H.B. 351 requires a court to include in an expunction order a listing of each official, agency, or other entity of this state or political subdivision of this state and each private entity that there is reason to believe has any record or file that is subject to the order and to provide in the order that the Department of Public Safety and the Texas Department of Criminal Justice are required to return to the court all records and files that are subject to the expunction order and to delete from the respective department's public records all index references to the records and files that are subject to the order. The bill excludes such cases from a provision of law requiring each official or agency or other governmental entity named in an expunction order, if removal of all records and files that are subject to the order is impracticable, to obliterate all portions of the record or file that identify the person who is the subject of the order and notify the court of its action. The bill requires the court to retain all records and files returned to the court by public and private entities until the statute of limitations has run for any civil case or proceeding relating to the wrongful imprisonment of the person subject to the expunction order.

C.S.H.B. 351 makes its provisions applicable to an expunction of arrest records and files for any criminal offense that occurred before, on, or after the bill's effective date or for which a pardon or other relief on the basis of actual innocence was granted before, on, or after the bill's effective date. The bill makes conforming and nonsubstantive changes.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 351 differs from the original in a provision expanding entitlement to have all records

and files relating to an arrest expunged to a person who has been placed under a custodial or noncustodial arrest for commission of either a felony or misdemeanor, is tried for the offense for which the person was arrested, and is convicted and subsequently granted relief on the basis of actual innocence with respect to that offense, by adding the condition that the applicable pardon or court order clearly indicate on its face that the pardon or order was granted or rendered on the basis of the person's actual innocence, whereas the original includes no such condition.

C.S.H.B. 351 differs from the original in a provision entitling an arrested person who has been released without having a pending charge or final conviction or court-ordered community supervision for an offense except for a Class C misdemeanor to expunction under certain conditions, by specifying that the absence of court-ordered community supervision for an offense is for any offense arising out of the transaction for which the person was arrested, whereas the original makes no such specification.

C.S.H.B. 351 differs from the original in a provision entitling a person to expunction because, among other conditions, an indictment or information charging the person with the commission of a felony or misdemeanor arising out of the transaction for which the person was arrested has not been presented, by making that entitlement contingent on the certification by the attorney representing the state that the applicable arrest records and files are not needed for use in any criminal investigation or prosecution, including an investigation or prosecution of another person, whereas the original establishes a waiting period of at least 180 days from the date of arrest before such person becomes so entitled to expunction. The substitute omits a provision included in the original establishing a waiting period of at least 180 days from the date of the dismissal or quashing for a person entitled to expunction because, among other conditions, the indictment or information presented was dismissed or quashed.

C.S.H.B. 351 contains a provision not included in the original prohibiting a person from expunging records and files relating to an arrest that occurs under a warrant issued for a violation of a condition of community supervision. The substitute differs from the original in nonsubstantive ways.